

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ROBERT A. STROMSTED,	:	
	:	
Plaintiff,	:	Case No.: 1:11-cv-02023-AKH
	:	
vs.	:	ECF CASE
	:	
HNTB CORPORATION,	:	
	:	
Defendant.	:	
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**DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

Defendant HNTB Corporation, by and through counsel, and pursuant to Federal Rule of Civil Procedure 12(b)(6)<sup>1</sup>, respectfully requests this Court enter an order dismissing Plaintiff Robert A. Stromsted's claim for injunctive and declaratory relief, for the reasons provided in Defendant HNTB Corporation's accompanying Memorandum in Support.

PLEASE TAKE FURTHER NOTICE that pursuant to Local Rule 6.1(b), Plaintiff shall serve Opposition to this motion on or before April 11, 2011, and that Defendant shall serve any Reply within seven (7) days after service of any Opposition.

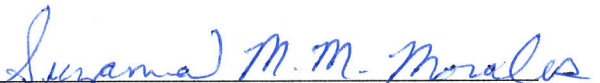
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<sup>1</sup> Though Defendant titles this motion to dismiss under Fed. R. Civ. P. 12(b)(6), Defendant acknowledges that, with regard to the forum selection clause argument outlined in the accompanying memorandum, there is a lack of clarity as to the proper procedural mechanism by which to bring that claim. *See New Moon Shipping Co., Ltd. v. Man B&W Diesel A.G.*, 121 F.3d 24, 29 (2nd Cir. 1997) ("[T]here is no existing mechanism with which forum selection enforcement is a perfect fit."). Therefore, the Court may wish to treat the forum selection clause portion of Defendant's argument as falling under Fed. R. Civ. P. 12(b)(3).

WHEREFORE, Defendant HNTB Corporation prays this Court enter an order granting Defendant's Motion to Dismiss, and for whatever additional relief the Court deems just and proper.

Respectfully submitted,

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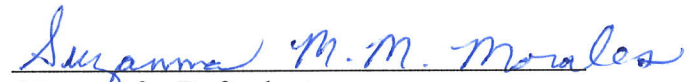
**CERTIFICATE OF SERVICE**

This is to certify that, on this 25th day of March, 2011, the foregoing was electronically filed via the ECF Court filing system and hand delivered to the below named counsel:

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